

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

TRUSTEES OF THE OPERATIVE PLASTERERS'  
and CEMENT MASONS' INTERNATIONAL  
ASSOCIATION, LOCAL 262 f/k/a 530 ANNUITY  
FUND, WELFARE FUND, APPRENTICESHIP  
TRAINING FUND and PENSION FUND and  
OPERATIVE PLASTERERS' and CEMENT  
MASONS' INTERNATIONAL ASSOCIATION  
LOCAL 262 f/k/a LOCAL 530

Plaintiffs,

-against-

IMPERIAL PAINTING & FIREPROOFING, INC.

Defendant.

07-CV-7956 (Crotty)

**AFFIRMATION FOR  
JUDGMENT BY DEFAULT**

State of New York : ss:  
County of Nassau :

Danielle M. Carney, being duly sworn, says:

1. I am a member of the Bar of this Court and am associated with the firm Barnes, Iaccarino, Virginia, Ambinder & Shepherd, PLLC, attorneys for plaintiff in the above-entitled action and I am familiar with all the facts and circumstances hereinafter set forth.

2. I make this affidavit pursuant to section 55 of the Federal Rules of Civil Procedure in support of plaintiff's application for the entry of a default judgment against defendant.

3. This is an action for an Order requiring the Defendant to pay contributions owed pursuant to audit and pursuant to a Collective Bargaining Agreement.

4. Jurisdiction of the subject matter of this action is based on 29 U.S.C. Section 1132(e)(i).

5. This action was commenced on September 11, 2007 by the filing of the summons and complaint. Annexed hereto and made a part hereof as "Exhibit A" is the Summons and Complaint. A copy of the Summons and Complaint was served on the defendant on October 2, 2007 and proof of service by the process server was filed with this Court on October 10, 2007. Annexed hereto and made a part hereof as "Exhibit B" is the Affidavit of Service. The defendant has not answered the complaint and the time for the defendant to answer the complaint or otherwise move in regard to it has expired.

6. The complaint seeks contributions owed for the period 10/1/05 to 6/30/06 as determined by an audit. Attached as Exhibit C is a copy of the audit indicating a total amount of \$3701.68.

7. The audit was revised after the review of documentation submitted by the Defendant and the deduction of a payment by the Defendant in the amount of \$425.42. Attached as Exhibit D is a copy of the revised audit indicating a reduced total of \$2913.33.

8. This action seeks judgment for \$4,665.31 which includes the contributions owed in the amount of \$384.90, dues in the amount of \$40.52; interest in the amount of \$27.91 (calculated at 7.28% of the contributions owed), liquidated damages in the amount of \$76.98 (20% of \$384.90); attorney fees in the amount of \$1,780.00; audit fees in the amount of \$1960.00 and court costs and disbursements in the amount of \$395.00 for a total of \$4,135.00 as shown by the annexed Statement of Damages, which is justly due and owing, and no part of which has been paid except as therein set forth. Attached hereto as Exhibit E is a copy of the process server bill in the amount of \$45.00 and the Statement of Damages is attached hereto as Exhibit F.

9. The disbursements sought to be taxed have been made in this action or will necessarily be made incurred herein.

10. Since this action is based on an audit and costs which are not "susceptible of mathematical computation", there is no need to prove the amount of damages at an inquest proceeding. Muskin v. Ketchum, 2004 U.S. District, Lexis 20976 (SDNY 2004).

11. The Defendant is a domestic business corporation and thereby is not an infant or an incompetent.

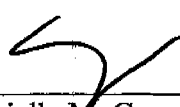
12. The attorney's fees are calculated as follows:

• Sent demand letter regarding audit results	\$500.00
• Prepared and filed Summons and Complaint	2.6 hours
• Sent Complaint out for service	.3 hours
• Received partial payment from Defendant and forwarded to Fund Office	.5 hours
• Sent revised audit to Defendant	.5 hours
• Prepared request for Default Judgment	2.5 hours
	<u>6.4 hours</u>

Total: 6.4 hours x \$200 per hour=\$1280 + \$500 = \$1,780

**WHEREFORE**, plaintiff requests the entry of Default and the entry of the annexed Judgment against the defendant.

Dated: February 26, 2008

  
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 Danielle M. Carney (DMC7471)  
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